

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JAMES LOWELL JONES, #30544

V.

D. ROARK, ET AL.

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CIVIL ACTION NO. G-06-646

PARTIAL ORDER OF DISMISSAL

Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on November 30, 2006, which recommends that Chief of Police Kenny Mack and the City of Galveston police department be dismissed as Defendants in the above-styled cause. Plaintiff has filed objections to the Report and Recommendation, asserting that had Mack not failed in his supervisory capacity, Plaintiff would not have suffered excessive use of force at the hands of police officers Roark and Vela of the City of Galveston police department. Plaintiff's objections did not address the Magistrate Judge's recommendation regarding the City of Galveston police department.

A Plaintiff cannot obtain damages or injunctive relief from a policy-maker or supervisor solely on a theory of *respondeat superior*. *Beattie v. Madison County Sch. Dist.*, 254 F.3d 595, 600 n.2 (5th Cir. 2001). The Fifth Circuit has noted that "supervisory officials may be held liable only if: (1) they affirmatively participate in acts that cause a constitutional deprivation; or (2) implement unconstitutional policies that causally result in Plaintiff's injuries." *Mouille v. City of Live Oak, Tex.*, 977 F.2d 924, 929 (5th Cir. 1992). Plaintiff has wholly failed to show either with respect to Defendant Mack. As such, his allegations against Defendant Mack fail to state a claim upon which relief can be granted.

Upon appropriate review pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)(C), the Court is satisfied that there is no clear error on the face of the record in these


proceedings. Accordingly, the Report and Recommendation is **ACCEPTED** in its entirety and incorporated herein by reference.

It is **ORDERED** that Defendants Kenny Mack and the City of Galveston police department, only, are **DISMISSED** from this cause.

The Clerk shall amend the style of this case as: *James Lowell Jones v. Officer D. Roark, et al.*

This matter is referred back to the Magistrate Judge for further consideration of Plaintiff's remaining claims.

DONE at Galveston, Texas, this the 15th day of December, 2006.



Samuel B. Kent
United States District Judge